

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
PHYSIOTHERAPY HOLDINGS, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 13-12965 (KG)
Debtors.	)	Joint Administration Requested

**DEBTORS' MOTION FOR ENTRY OF INTERIM  
AND FINAL ORDERS AUTHORIZING THE DEBTORS  
TO MAINTAIN AND ADMINISTER THEIR REFUND PROGRAM  
AND HONOR PREPETITION OBLIGATIONS RELATED THERETO**

Physiotherapy Holdings, Inc. and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “*Debtors*”), respectfully represent:

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal taxpayer-identification number, are: Physiotherapy Holdings, Inc. (5193); Actra Rehabilitation Associates, Inc. (7806); Alexandria Sports, Inc. (7654); Benchmark Acquisition Corp. (3850); Benchmark Medical Management Company (0335); Benchmark O&P Holdings, Inc. (6848); Benchmark Orthotics & Prosthetics, Inc. (7000); Blue Hen Physical Therapy, Inc. (7267); Cape Prosthetics-Orthotics, Inc. (7914); Carrollton Physical Therapy Clinic, Inc. (2832); Integrity Physical Therapy, Inc. (1075); Keystone Rehabilitation Associates of Warren (8341); Keystone Rehabilitation Systems, Inc. (8380); Keystone Rehabilitation Systems of McMurray (6304); Leesburg Sports, Inc. (4190); MATRIX Healthcare Services, LLC (7344); MATRIX Rehabilitation, Inc. (3147); MATRIX Rehabilitation-Delaware, Inc. (2504); MATRIX Rehabilitation-Georgia, Inc. (4073); MATRIX Rehabilitation-Ohio, Inc. (2505); MATRIX Rehabilitation-South Carolina, Inc. (5603); MATRIX Rehabilitation-Texas, Inc. (9542); Morris Area Rehabilitation Association, Inc. (2043); North Dallas Physical Therapy Associates, Inc. (5331); Northstar Health Services, Inc. (7152); NSHS Services, Inc. (6789); Orthopaedic Services of Paducah, Inc. (3143); PhysioLink Corporation (3705); Physiotherapy Associates Holdings, Inc. (3367); Physiotherapy Associates, Inc. (7193); Physiotherapy Associates-Union Rehab, LLC (0041); Physiotherapy Corporation (3816); Physiotherapy-BMHI Holdings, Inc. (3361); Physiotherapy-BMI, Inc. (4107); Potomac Rehabilitation Services, Inc. (2725); Professional Rehab Associates, Inc. (2393); Progressive Therapy Services, Inc. (8449); Rehab Associates, L.L.C. (9381); Rehab Colorado, LLC (5804); Rehab Missouri, LLC (0587); Rehab Xcel, LLC (0586); Rehabilitation Consultants, Inc. (1166); R.S. Network, Inc. (9104); SMR Banyan Tree, Inc. (6933); Swanson Orthotic & Prosthetic Center, Inc. (2308); The Parks Physical Therapy and Work Hardening Center, Inc. (2926); Theraphysics Partners of Colorado, Inc. (2115); Theraphysics Partners of Texas, Inc. (9976); Therapy Associates of Martinsville, Inc. (1394); Trumbull P.T. Corp. (3855); Wisconsin Prosthetics and Orthotics, Inc. (7815). The Debtors’ main corporate address is 855 Springdale Drive, Suite 200, Exton, PA 19341.



**Jurisdiction**

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).
2. Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The bases for the relief requested herein are sections 105(a), 363, 1107(a) and 1108 of the Bankruptcy Code, Rules 6003 and 6004(h) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and Rule 9013-1(m) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”).

**Introduction**<sup>2</sup>

4. The Debtors are the largest pure-play providers of outpatient physical therapy services in the United States with a national footprint of 581 outpatient rehabilitation and orthotics and prosthetics clinics located in 29 states plus the District of Columbia. With over 1,500 clinicians managing over 2.9 million patient visits per year, the Debtors provide the entire spectrum of outpatient rehabilitation therapy, including physical therapy, sports and industrial rehabilitation, hand and aquatic therapy, women’s health, pediatric and geriatric programs. The Debtors also provide a comprehensive suite of orthotic, prosthetic and core rehabilitation therapy solutions at each clinic to service the needs of their patients. The Debtors currently employ approximately 3,859 employees and contract with insurers and managed care entities on a local,

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<sup>2</sup> A detailed description of the Debtors and their businesses, and the facts and circumstances supporting this motion and the Debtors’ chapter 11 cases, are set forth in greater detail in the Declaration of Martin McGahan, Chief Restructuring Officer and Interim Chief Executive Officer of Physiotherapy Holdings, Inc., in Support of First Day Pleadings (the “**First Day Declaration**”), filed contemporaneously with the Debtors’ voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”).

regional and national basis, all reflecting the strength of the Debtors' scale and density as well as their institutional goodwill and sturdy reputation in the outpatient physical therapy market sector.

5. While the Debtors' operations are fundamentally sound and profitable, in March 2013, during the course of their fiscal year 2012 audit, they discovered there had been an overstatement of revenue and profitability. Upon such discovery, the Debtors' board of directors took proactive steps to address the potential impact of the accounting issues, including hiring Kirkland & Ellis LLP as restructuring counsel, engaging Rothschild Inc. as financial advisor, hiring Alvarez & Marsal Healthcare Industry Group as operational and restructuring advisor and forming a special committee to investigate potential claims related to the overstatement of revenue and profitability and to engage Dechert LLP as special counsel.

6. The Debtors, in consultation with their advisors, ultimately determined that it would be necessary for the Debtors to deleverage their balance sheet to right-size their capital structure and more efficiently compete in the outpatient rehabilitation and physical therapy industry. To preserve liquidity while commencing restructuring negotiations with other stakeholders, the Debtors elected to forego the \$12.5 million interest payment on their \$210 million 11.875% senior notes due 2019 (the "*Senior Notes*"). The Debtors' inability to deliver the audited financials and their failure to make the May 1, 2013 coupon payment to the Senior Notes resulted in defaults both under the 2012 credit agreement and the Senior Notes indenture.

7. Starting in May 2013, the Debtors proactively engaged in discussions with their key stakeholders, including an ad hoc committee that currently holds over 90% in principal amount of the Senior Notes and their equity sponsor, regarding potential restructuring alternatives. These collaborative talks resulted in the Debtors negotiating a fully consensual

restructuring transaction that will be implemented swiftly through a “prepackaged” chapter 11 plan of reorganization (the “*Plan*”) and will, among other things, (a) reduce their prepetition funded debt by more than 62%, from approximately \$375 million to approximately \$144 million, (b) provide the Debtors with reasonable, long-term financing and permit additional indebtedness that will enable them to support their go-forward business needs and (c) establish and fund a litigation trust to consolidate and coordinate prosecution of certain claims and causes of action transferred and assigned to the litigation trust.

8. On October 10, 2013, the Debtors entered into a plan support agreement with 100% of their bridge loan lenders, holders of over 90% in principal amount of the Senior Notes, and their equity sponsor and its affiliates, which collectively hold approximately 90% of the outstanding shares of Physiotherapy Holdings, Inc. On the same day, the Debtors commenced solicitation of the Plan. As of the November 8, 2013 voting deadline, 100% of the holders of claims arising under the Debtors’ bridge loan facility and 100% of the holders of Senior Notes claims that submitted ballots, consisting of approximately 99.71% of the holders of Senior Notes in dollar amount, voted to accept the Plan.

9. On the date hereof (the “*Petition Date*”), each of the Debtors filed a petition with the Court under chapter 11 of the Bankruptcy Code to effectuate the Plan, enhance liquidity and solidify their long-term growth prospects and operating performance. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in these chapter 11 cases, and no committees have been appointed or designated. Concurrently with the filing of this motion, the Debtors have requested procedural consolidation and joint administration of these chapter 11 cases.

**Relief Requested**

10. By this motion, the Debtors request entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B** (the “*Interim Order*” and the “*Final Order*,” respectively), (a) authorizing the Debtors to (i) maintain and administer the Debtors’ Refund Program (as defined herein) and (ii) make payments to patients or otherwise honor accrued prepetition obligations owed under their Refund Program (collectively, and as identified below, the “*Refund Program Obligations*”) and to continue, replace, modify or terminate any Refund Program in the ordinary course of business, (b) authorizing and directing financial institutions to receive, process, honor and pay all related checks and electronic payment requests for payment of Refund Program Obligations, (c) scheduling a final hearing (the “*Final Hearing*”) to consider entry of the Final Order, to the extent necessary, and (d) granting such other and further relief as may be appropriate.

11. Various state and federal laws require the Debtors to refund patients and third-party payors, including healthcare insurers, managed care organizations, workers’ compensation programs, contract management services, private pay sources, Medicare and Medicaid (“*Third-Party Payors*”), when overpayments are identified. As a result, absent honoring the Refund Program Obligations in the ordinary course of business, the Debtors may face legal sanctions in the jurisdictions in which they operate. In addition, failure to honor the Refund Program Obligations would cause the Debtors to lose a significant number of payors and patients and damage their reputation for reliability, thereby resulting in a long-term decline in business. Thus, the Refund Program is necessary for the Debtors to stay competitive and maintain their base of patients during this critical juncture as well as during the course of these chapter 11 cases.

### The Debtors' Refund Program

12. In the ordinary course of business, the Debtors routinely issue refunds for reimbursement of overpayments made by or on behalf of patients resulting from the interaction between the Debtors' billing practices, patient medical insurance deductibles and third-party payments (the "*Refund Program*"). Patients make payments at point-of-service for deductibles, co-insurance and co-payments, which typically are not fully covered by insurance payors. Once the Debtors receive payments from an insurer, the Debtors review accounts that have credit balances and refund any surplus to the patient or the Third-Party Payor who is due a refund based on an overpayment. When the Debtors discover and verify an overpayment from a patient or Third-Party Payor, the amount of the overpayment is entered in the Debtors' accounts payable system as a refund. There is typically a lag of as much as 60 days after the overpayment is recognized or determined before it is entered into the Debtors' accounts payable system. After the overpayment amount is entered into the accounts payable system, the Debtors issue a check to the patient or Third-Party Payor in the amount of the refund.

13. At any given time, it is difficult to determine the amount of outstanding overpayments that have been identified, but for which a refund check has not yet been issued. Moreover, some refund checks issued to patients or Third-Party Payors before the Petition Date may not have been presented for payment or may not have cleared the Debtors' banking system and, accordingly, have not been honored and paid as of the Petition Date. Nonetheless, the Debtors are required, under the laws of various states, to reimburse patients and Third-Party Payors as overpayments are identified. The Debtors estimate that approximately \$300,000 to \$350,000 in refunds are processed in a given month, although larger amounts of refunds are often due and owing at any given time.

14. As of the Petition Date, the Debtors estimate that approximately \$4.7 million in refunds and credit balances may be due and owing under the Refund Program. The Debtors seek authority to continue to issue and pay the Refund Program Obligations to patients and Third-Party Payors, including refunds for overpayments made prepetition or resulting from prepetition services, as was done in the ordinary course of business.

15. The Debtors request the authority to honor the Refund Program Obligations in their discretion in the ordinary course of business on a postpetition basis.

**Supporting Authority**

**A. The Court Should Authorize the Debtors to Maintain Their Refund Program and Honor Refund Program Obligations Under the Doctrine of Necessity**

16. Courts generally acknowledge that, under appropriate circumstances, they may authorize a debtor to pay (or provide special treatment for) certain prepetition obligations. *See, e.g., In re Just for Feet, Inc.*, 242 B.R. 821, 824-45 (Bankr. D. Del. 1999) (noting that, in the Third Circuit, debtors may pay prepetition claims that are essential to the continued operation of the debtor's business); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (granting the debtor the authority to pay prepetition wages); *Armstrong World Indus., Inc. v. James A. Phillips, Inc.*, (*In re James A. Phillips, Inc.*), 29 B.R. 391, 398 (Bankr. S.D.N.Y. 1983) (granting the debtor the authority to pay prepetition claims of suppliers who were potential lien claimants). When authorizing payments of certain prepetition obligations, courts have relied upon several legal theories rooted in sections 1107(a), 1108, 363(b) and 105(a) of the Bankruptcy Code.

17. Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, debtors in possession are fiduciaries charged with "holding the bankruptcy estate[s] and operating the business[es] for the benefit of [their] creditors and (if the value justifies) equity owners." *In re*

*CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). Inherent in a debtor in possession's fiduciary duties is the obligation to "protect and preserve the estate, including an operating business's going-concern value," which, in certain instances, can be fulfilled "only . . . by the preplan satisfaction of a prepetition claim." *Id.* Indeed, the *CoServ* court specifically noted that the preplan satisfaction of prepetition claims would be a valid exercise of the debtor's fiduciary duty when the payment "is the only means to effect a substantial enhancement of the estate . . . ." *Id.*

18. Consistent with a debtor's fiduciary duties, where there is a sound business purpose for the payment of prepetition obligations, and where the debtor is able to "articulate some business justification, other than the mere appeasement of major creditors," courts have authorized debtors to make such payments under section 363(b) of the Bankruptcy Code. *See, e.g., In re Ionosphere Clubs, Inc.*, 98 B.R. at 175 (finding that a sound business justification existed to pay prepetition wages); *In re James A. Phillips, Inc.*, 29 B.R. at 397 (relying upon section 363 as a basis to allow a contractor to pay the prepetition claims of suppliers who were potential lien claimants).<sup>3</sup>

19. In addition to the authority granted a debtor in possession under sections 1107(a), 1108, 363(b) and 105(a) of the Bankruptcy Code, courts have developed the "doctrine of

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<sup>3</sup> Courts have also authorized payment of prepetition claims in appropriate circumstances pursuant to section 105(a) of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code, which codifies the inherent equitable powers of the bankruptcy court, empowers the bankruptcy court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). Under section 105(a), courts may permit preplan payments of prepetition obligations when such payments are essential to the continued operation of the debtor's business and, in particular, where nonpayment of a prepetition obligation would trigger a withholding of goods or services essential to the debtors' business reorganization plan. *See In re UNR Indus.*, 143 B.R. 506, 520 (Bankr. N.D. Ill. 1992) (permitting the debtor to pay prepetition claims of suppliers or employees whose continued cooperation is essential to the debtors' successful reorganization); *Ionosphere Clubs*, 98 B.R. at 177 (finding that section 105 empowers bankruptcy courts to authorize payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor).



necessity” or the “necessity of payment” rule, which originated in the landmark case of *Miltenberger v. Logansport, C. & S.W.R. Co.*, 106 U.S. 286 (1882). Since *Miltenberger*, courts have expanded their application of the doctrine of necessity to cover instances of a debtor’s reorganization, see *Dudley v. Mealey*, 147 F.2d 268, 271 (2d Cir. 1945) (holding, in a hotel reorganization matter, that the court was not “helpless” to apply the rule to supply creditors where the alternative was the cessation of operations), including the United States Court of Appeals for the Third Circuit, which recognized the doctrine in *In re Lehigh & New England Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981).

20. In *Lehigh*, the Third Circuit held that a court could authorize the payment of prepetition claims if such payment was essential to the continued operation of the debtor. *Id.* (stating that a court may authorize payment of prepetition claims when there “is the possibility that the creditor will employ an immediate economic sanction, failing such payment”); see also *In re Penn Cent. Transp. Co.*, 467 F.2d 100, 102 n.1 (3d Cir. 1972) (holding that the necessity of payment doctrine permits “immediate payment of claims of creditors where those creditors will not supply services or material essential to the conduct of the business until their pre-reorganization claims have been paid”); *In re Just for Feet, Inc.*, 242 B.R. at 824-45 (noting that debtors may pay prepetition claims that are essential to continued operation of the business); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191-92 (Bankr. D. Del. 1994) (same).

21. Today, the rationale for the necessity of payment rule – the rehabilitation of a debtor in reorganization cases – is “the paramount policy and goal of Chapter 11.” *In re Ionosphere Clubs, Inc.*, 98 B.R. at 176; *Just For Feet*, 242 B.R. at 826 (finding that payment of prepetition claims to certain trade vendors was “essential to the survival of the debtor during the chapter 11 reorganization.”); see also *In re Quality Interiors, Inc.*, 127 B.R. 391, 396 (Bankr.

N.D. Ohio 1991) (“[P]ayment by a debtor-in-possession of pre-petition claims outside of a confirmed plan of reorganization is generally prohibited by the Bankruptcy Code”, but “[a] general practice has developed . . . where bankruptcy courts permit the payment of certain pre-petition claims, pursuant to 11 U.S.C. § 105, where the debtor will be unable to reorganize without such payment.”); *In re Eagle-Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (approving payment of prepetition unsecured claims of tool makers as “necessary to avert a serious threat to the Chapter 11 process”); *Burchinal v. Cent. Wash. Bank (In re Adams Apple, Inc.)*, 829 F.2d 1484, 1490 (9th Cir. 1987) (finding that it is appropriate to provide for the “unequal treatment of pre-petition debts when [such treatment is] necessary for rehabilitation . . .”); Collier on Bankruptcy P 105.02[4][a] (Alan N. Resnick & Henry J. Sommer eds., 16th ed. rev.) (discussing cases in which courts have relied upon the “doctrine of necessity” or the “necessity of payment” rule to pay prepetition claims immediately).

22. The relief requested by the Debtors satisfies this standard. The necessity of the Refund Program in the medical services industry cannot be overstated. In fact, the Refund Program is standard practice in the Debtors’ industry. If the Refund Program Obligations are not honored, the Debtors risk legal sanctions as well as alienating patients and Third-Party Payors and encouraging them to seek services from the Debtors’ competitors. The failure to honor the Refund Program could erode the Debtors’ hard-earned reputation and brand loyalty, adversely affecting the Debtors’ prospects for a successful reorganization.

23. Courts in this District have routinely granted relief similar to the relief requested herein. *See, e.g., In re Conexant Sys., Inc.*, No. 13-10367 (MFW) (Bankr. D. Del. April 19, 2013) (authorizing Debtors to continue Customer Programs and honor their prepetition obligations under the Customer Programs); *In re Vertis Holdings, Inc.*, No. 12-12821 (CSS) (Bankr. D. Del.

Oct. 31, 2012) (same); *In re Neb. Book Co.*, No. 11-12005 (PJW) (Bankr. D. Del. June 28, 2011) (authorizing the Debtors to continue the Customer Programs in the ordinary course of business); *In re Appleseed's Intermediate Holdings, LLC*, No. 11-10160 (KG) (Bankr. D. Del. Jan. 20, 2011) (authorizing the Debtors to maintain and administer the Customer Programs and satisfy the Customer Program obligations in the ordinary course of business); *In re Local Insight Media Holdings, Inc.*, No. 10-13677 (KG) (Bankr. D. Del. Nov. 19, 2010) (authorizing Debtors to honor certain prepetition obligations to customers and continue prepetition customer programs and practices in the ordinary course of business); *In re The Majestic Star Casino, LLC*, No. 09-14136 (KG) (Bankr. D. Del. Nov. 23, 2009) (authorizing the Debtors to honor Customer Programs and related prepetition customer obligations).<sup>4</sup>

**B. Cause Exists to Authorize and Direct the Debtors' Financial Institutions to Honor Checks and Electronic Fund Transfers**

24. The Debtors represent that they have sufficient availability of funds to pay the amounts described herein in the ordinary course of business by virtue of cash reserves, expected cash flows from ongoing business operations and anticipated access to cash collateral. Also, under the Debtors' existing cash management system, the Debtors represent that checks or wire transfer requests can be readily identified as relating to an authorized payment of the Refund Program Obligations. Accordingly, the Debtors believe that checks or wire transfer requests, other than those relating to authorized payments, will not be honored inadvertently and that all applicable financial institutions should be authorized, when requested by the Debtors, to receive, process, honor and pay any and all checks or wire transfer requests with respect to the Refund

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<sup>4</sup> Because of the voluminous nature of the orders cited herein, such orders are not attached to this motion. Copies of these orders are available upon request to the Debtors' counsel.

Program Obligations.

**The Requirements of Bankruptcy Rule 6003 are Satisfied**

25. As described above, the Debtors are seeking authority pursuant to this motion to pay prepetition Refund Program Obligations during the first 21 days of these chapter 11 cases. Under Bankruptcy Rule 6003, the Court may authorize the Debtors to satisfy the prepetition claims arising from their Refund Program during the first 21 days of these chapter 11 cases to the extent such relief is necessary to avoid immediate and irreparable harm to the Debtors' estates. *See* Fed. R. Bankr. P. 6003(b). Immediate and irreparable harm exists where the absence of relief would impair a debtor's ability to reorganize or threaten the debtor's future as a going concern. *See In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 36 n.2 (Bankr. S.D.N.Y. 1990) (discussing the elements of "immediate and irreparable harm" in relation to Bankruptcy Rule 4001).

26. The Debtors firmly believe that continuing the Refund Program and honoring the Refund Program Obligations uninterrupted in these chapter 11 cases is necessary to prevent immediate and irreparable harm to the Debtors' estates and business operations. As described above, the Refund Program is integral to the Debtors' continued operations because it is necessary to maintain the confidence and goodwill of the Debtors' customer base. This is especially true in light of the competitive nature of the Debtors' medical service businesses, where the Refund Program is standard practice and demanded by patients and Third-Party Payors. Indeed, a reputation for excellent customer service and brand integrity is one of the Debtors' most valuable assets and must be preserved. Accordingly, the Debtors respectfully submit that they have satisfied the "immediate and irreparable harm" standard of Bankruptcy Rule 6003 and seek authority to honor and, where necessary, pay, the Refund Program

Obligations in the ordinary course of business and pursuant to the Interim Order.

**Waiver of Bankruptcy Rules Regarding Notice and Stay of an Order**

27. To implement the foregoing successfully, the debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and any stay of an order granting the relief requested herein pursuant to Bankruptcy Rule 6004(h), 7062, 9014 or otherwise.

**The Debtors' Reservation of Rights**

28. Nothing contained herein is intended or should be construed as an admission as to the validity of any claim against the Debtors, a waiver of the Debtors' rights to dispute any claim or an approval or assumption of any agreement, contract or lease under section 365 of the Bankruptcy Code. Additionally, nothing contained herein is intended or should be construed as an admission as to the validity of any claim against the Debtors or a waiver of the Debtors' rights to dispute any claims regarding escheatment. The Debtors expressly reserve their rights to contest any claim or billing dispute. Likewise, if this Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the validity of any claim or a waiver of the Debtors' rights to subsequently dispute such claim.

**Notice**

29. The Debtors have provided notice of this motion to: (a) the Office of the United States Trustee for the District of Delaware; (b) the entities listed on the Consolidated List of Creditors Holding the 30 Largest Unsecured Claims filed pursuant to Bankruptcy Rule 1007(d); (c) counsel to the administrative and collateral agent under the Debtors' bridge loan credit agreement; (d) counsel for certain lenders under the bridge loan credit agreement; (e) counsel to the Senior Notes indenture trustee; (f) counsel to the ad hoc committee of senior noteholders;

(g) counsel to the equity sponsor; (h) each of the holders of equity interests in the Debtors; (i) the Delaware Secretary of State; (j) the Delaware Secretary of Treasury; (k) the Delaware State Attorney General; (l) the Office of the United States Attorney General for the State of Delaware; (m) the Internal Revenue Service; and (n) the Securities and Exchange Commission. In light of the nature of the relief requested in this motion, the Debtors respectfully submit that no further notice is necessary.

**No Prior Request**

30. No prior motion for the relief requested herein has been made to this or any other court.

WHEREFORE, for the reasons set forth herein and in the First Day Declaration, the Debtors respectfully request that the Court enter the Interim Order and the Final Order, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B**, respectively: (a) authorizing the Debtors to (i) maintain and administer the Debtors' Refund Program (as defined herein) and (ii) make payments to patients or otherwise honor the Refund Program Obligations and to continue, replace, modify or terminate any Refund Program in the ordinary course of business; (b) authorizing and directing financial institutions to receive, process, honor and pay all related checks and electronic payment requests for payment of Refund Program Obligations; (c) scheduling the Final Hearing to consider entry of the Final Order, to the extent necessary; and (d) granting such other and further relief as may be appropriate.

*[Remainder of page intentionally left blank.]*

Dated: November 12, 2013  
Wilmington, Delaware

*/s/ Domenic E. Pacitti*

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Domenic E. Pacitti (DE Bar No. 3989)  
Michael W. Yurkewicz (DE Bar No. 4165)  
**KLEHR HARRISON HARVEY  
BRANZBURG LLP**  
919 N. Market Street, Suite 1000  
Wilmington, Delaware 19801  
Telephone: (302) 426-1189  
Facsimile: (302) 426-9193

- and -

Morton Branzburg (*pro hac vice* admission pending)  
**KLEHR HARRISON HARVEY  
BRANZBURG LLP**  
1835 Market Street, Suite 1400  
Philadelphia, Pennsylvania 19103  
Telephone: (215) 569-2700  
Facsimile: (215) 568-6603

- and -

Jonathan S. Henes, P.C. (*pro hac vice* admission pending)  
Nicole L. Greenblatt (*pro hac vice* admission pending)  
David S. Meyer (*pro hac vice* admission pending)  
**KIRKLAND & ELLIS LLP**  
601 Lexington Avenue  
New York, New York 10022  
Telephone: (212) 446-4800  
Facsimile: (212) 446-4900

*Proposed Co-Counsel to the Debtors  
and Debtors in Possession*

**Exhibit A**

**Proposed Interim Order**



**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	Chapter 11
PHYSIOTHERAPY HOLDINGS, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 13-12965 (KG)
Debtors.	)	Joint Administration Requested

**INTERIM ORDER AUTHORIZING THE DEBTORS TO  
MAINTAIN AND ADMINISTER THEIR REFUND PROGRAM  
AND HONOR PREPETITION OBLIGATIONS RELATED THERETO**

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Upon the motion (the “*Motion*”)<sup>2</sup> of the Debtors for entry of an order (this “*Order*”), pursuant to sections 105(a), 363, 1107(a) and 1108 of the Bankruptcy Code, Rules 6003 and 6004(h) of the Bankruptcy Rules and Rule 9013-1(m) of the Local Rules, (a) authorizing the

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal taxpayer-identification number, are: Physiotherapy Holdings, Inc. (5193); Actra Rehabilitation Associates, Inc. (7806); Alexandria Sports, Inc. (7654); Benchmark Acquisition Corp. (3850); Benchmark Medical Management Company (0335); Benchmark O&P Holdings, Inc. (6848); Benchmark Orthotics & Prosthetics, Inc. (7000); Blue Hen Physical Therapy, Inc. (7267); Cape Prosthetics-Orthotics, Inc. (7914); Carrollton Physical Therapy Clinic, Inc. (2832); Integrity Physical Therapy, Inc. (1075); Keystone Rehabilitation Associates of Warren (8341); Keystone Rehabilitation Systems, Inc. (8380); Keystone Rehabilitation Systems of McMurray (6304); Leesburg Sports, Inc. (4190); MATRIX Healthcare Services, LLC (7344); MATRIX Rehabilitation, Inc. (3147); MATRIX Rehabilitation-Delaware, Inc. (2504); MATRIX Rehabilitation-Georgia, Inc. (4073); MATRIX Rehabilitation-Ohio, Inc. (2505); MATRIX Rehabilitation-South Carolina, Inc. (5603); MATRIX Rehabilitation-Texas, Inc. (9542); Morris Area Rehabilitation Association, Inc. (2043); North Dallas Physical Therapy Associates, Inc. (5331); Northstar Health Services, Inc. (7152); NSHS Services, Inc. (6789); Orthopaedic Services of Paducah, Inc. (3143); PhysioLink Corporation (3705); Physiotherapy Associates Holdings, Inc. (3367); Physiotherapy Associates, Inc. (7193); Physiotherapy Associates-Union Rehab, LLC (0041); Physiotherapy Corporation (3816); Physiotherapy-BMHI Holdings, Inc. (3361); Physiotherapy-BMI, Inc. (4107); Potomac Rehabilitation Services, Inc. (2725); Professional Rehab Associates, Inc. (2393); Progressive Therapy Services, Inc. (8449); Rehab Associates, L.L.C. (9381); Rehab Colorado, LLC (5804); Rehab Missouri, LLC (0587); Rehab Xcel, LLC (0586); Rehabilitation Consultants, Inc. (1166); R.S. Network, Inc. (9104); SMR Banyan Tree, Inc. (6933); Swanson Orthotic & Prosthetic Center, Inc. (2308); The Parks Physical Therapy and Work Hardening Center, Inc. (2926); Theraphysics Partners of Colorado, Inc. (2115); Theraphysics Partners of Texas, Inc. (9976); Therapy Associates of Martinsville, Inc. (1394); Trumbull P.T. Corp. (3855); Wisconsin Prosthetics and Orthotics, Inc. (7815). The Debtors’ main corporate address is 855 Springdale Drive, Suite 200, Exton, PA 19341.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Motion.

Debtors to maintain and administer the Refund Program and satisfy the Refund Program Obligations in the ordinary course of business, (b) authorizing and directing financial institutions to receive, process, honor and pay all related checks and electronic payment requests for payment of Refund Program Obligations, (c) scheduling a final hearing (the "*Final Hearing*") to consider entry of the Final Order, to the extent necessary, and (d) granting such other and further relief as may be appropriate, all as more fully described in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding in accordance with 28 U.S.C. § 157(b)(2); and venue being proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion being adequate and appropriate under the particular circumstances; and a hearing having been held to consider the relief requested in the Motion (the "*Hearing*"); and upon consideration of the First Day Declaration, the record of the Hearing and all proceedings had before the Court; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors' estates, their creditors and other parties in interest; and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and any objections to the requested relief having been withdrawn or overruled on the merits; and after due deliberation and sufficient cause appearing therefor, it is hereby ORDERED:

1. The Motion is granted on an interim basis to the extent provided herein.
2. The Debtors are authorized to continue, maintain, administer or terminate, in the ordinary course of business, the Refund Program and to pay or otherwise honor any Refund Program Obligation, consistent with the Debtors' ordinary course procedures.
3. Notwithstanding the relief granted herein and any actions taken hereunder,

nothing contained in this Order or any payment made pursuant to this Order shall constitute, nor is it intended to constitute, an admission as to the validity or priority of any claim against the Debtors, a waiver of the Debtors' rights to subsequently dispute such claim or the assumption or adoption of any agreement, contract or lease under section 365 of the Bankruptcy Code.

4. Notwithstanding anything to the contrary contained herein, any payment to be made, or authorization contained, hereunder shall be subject to the requirements imposed on the Debtors under any approved order regarding the use of cash collateral approved by this Court in these chapter 11 cases.

5. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

6. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized and directed to receive, process, honor and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as being approved by this Order.

7. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied by the contents of the Motion or are otherwise deemed waived.

8. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 7062, 9014 or otherwise, this Order shall be immediately effective and enforceable upon its entry. The Final Hearing on the Motion shall be held on \_\_\_\_\_, 2013 at \_\_\_\_:\_\_\_\_ a.m./p.m. prevailing Eastern Time. Any objections or responses to entry of the proposed Final Order shall be filed **seven days before** the Final Hearing and served on the following parties: (a) the Office

of the United States Trustee for the District of Delaware; (b) the entities listed on the Consolidated List of Creditors Holding the 30 Largest Unsecured Claims filed pursuant to Bankruptcy Rule 1007(d); (c) counsel to the administrative and collateral agent under the Debtors' bridge loan credit agreement; (d) counsel for certain lenders under the bridge loan credit agreement; (e) counsel to the Senior Notes indenture trustee; (f) counsel to the ad hoc committee of senior noteholders; (g) counsel to the equity sponsor; (h) each of the holders of equity interests in the Debtors; (i) the Delaware Secretary of State; (j) the Delaware Secretary of Treasury; (k) the Delaware State Attorney General; (l) the Office of the United States Attorney General for the State of Delaware; (m) the Internal Revenue Service; and (n) the Securities and Exchange Commission. In the event no objections to entry of the Final Order are timely received, the Court may enter the Final Order without need for the Final Hearing.

9. The Court retains jurisdiction with respect to all matters arising from or related to the interpretation or implementation of this Order.

Date: \_\_\_\_\_, 2013  
Wilmington, Delaware

\_\_\_\_\_  
The Honorable Kevin Gross  
Chief United States Bankruptcy Judge

**Exhibit B**

**Proposed Final Order**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
PHYSIOTHERAPY HOLDINGS, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 13-12965 (KG)
Debtors.	)	Joint Administration Requested

**FINAL ORDER AUTHORIZING THE DEBTORS TO  
MAINTAIN AND ADMINISTER THEIR REFUND PROGRAM  
AND HONOR PREPETITION OBLIGATIONS RELATED THERETO**

Upon the motion (the "*Motion*")<sup>2</sup> of the Debtors for entry of an order (this "*Order*"), pursuant to sections 105(a), 363, 1107(a) and 1108 of the Bankruptcy Code, Rules 6003 and 6004(h) of the Bankruptcy Rules and Rule 9013-1(m) of the Local Rules, (a) authorizing the

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal taxpayer-identification number, are: Physiotherapy Holdings, Inc. (5193); Actra Rehabilitation Associates, Inc. (7806); Alexandria Sports, Inc. (7654); Benchmark Acquisition Corp. (3850); Benchmark Medical Management Company (0335); Benchmark O&P Holdings, Inc. (6848); Benchmark Orthotics & Prosthetics, Inc. (7000); Blue Hen Physical Therapy, Inc. (7267); Cape Prosthetics-Orthotics, Inc. (7914); Carrollton Physical Therapy Clinic, Inc. (2832); Integrity Physical Therapy, Inc. (1075); Keystone Rehabilitation Associates of Warren (8341); Keystone Rehabilitation Systems, Inc. (8380); Keystone Rehabilitation Systems of McMurray (6304); Leesburg Sports, Inc. (4190); MATRIX Healthcare Services, LLC (7344); MATRIX Rehabilitation, Inc. (3147); MATRIX Rehabilitation-Delaware, Inc. (2504); MATRIX Rehabilitation-Georgia, Inc. (4073); MATRIX Rehabilitation-Ohio, Inc. (2505); MATRIX Rehabilitation-South Carolina, Inc. (5603); MATRIX Rehabilitation-Texas, Inc. (9542); Morris Area Rehabilitation Association, Inc. (2043); North Dallas Physical Therapy Associates, Inc. (5331); Northstar Health Services, Inc. (7152); NSHS Services, Inc. (6789); Orthopaedic Services of Paducah, Inc. (3143); PhysioLink Corporation (3705); Physiotherapy Associates Holdings, Inc. (3367); Physiotherapy Associates, Inc. (7193); Physiotherapy Associates-Union Rehab, LLC (0041); Physiotherapy Corporation (3816); Physiotherapy-BMHI Holdings, Inc. (3361); Physiotherapy-BMI, Inc. (4107); Potomac Rehabilitation Services, Inc. (2725); Professional Rehab Associates, Inc. (2393); Progressive Therapy Services, Inc. (8449); Rehab Associates, L.L.C. (9381); Rehab Colorado, LLC (5804); Rehab Missouri, LLC (0587); Rehab Xcel, LLC (0586); Rehabilitation Consultants, Inc. (1166); R.S. Network, Inc. (9104); SMR Banyan Tree, Inc. (6933); Swanson Orthotic & Prosthetic Center, Inc. (2308); The Parks Physical Therapy and Work Hardening Center, Inc. (2926); Theraphysics Partners of Colorado, Inc. (2115); Theraphysics Partners of Texas, Inc. (9976); Therapy Associates of Martinsville, Inc. (1394); Trumbull P.T. Corp. (3855); Wisconsin Prosthetics and Orthotics, Inc. (7815). The Debtors' main corporate address is 855 Springdale Drive, Suite 200, Exton, PA 19341.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Motion.

Debtors to maintain and administer the Refund Program and satisfy the Refund Program Obligations in the ordinary course of business; (b) authorizing and directing financial institutions to receive, process, honor and pay all related checks and electronic payment requests for payment of Refund Program Obligations and (c) granting such other and further relief as may be appropriate, all as more fully described in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding in accordance with 28 U.S.C. §§ 157(b)(2); and venue being proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion being adequate and appropriate under the particular circumstances; and a hearing having been held to consider the relief requested in the Motion (the "*Hearing*"); and upon consideration of the First Day Declaration, the record of the Hearing and all proceedings had before the Court; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors' estates, their creditors and other parties in interest; and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and any objections to the requested relief having been withdrawn or overruled on the merits; and after due deliberation and sufficient cause appearing therefor, it is hereby ORDERED:

1. The Motion is granted to the extent provided herein.
2. The Debtors are authorized to continue, maintain, administer or terminate, in the ordinary course of business, the Refund Program and to pay or otherwise honor any Refund Program Obligation, consistent with the Debtors' ordinary course procedures, including any relief provided in the Interim Order that is approved on a final basis.
3. Notwithstanding the relief granted herein and any actions taken hereunder,

nothing contained in this Order or any payment made pursuant to this Order shall constitute, nor is it intended to constitute, an admission as to the validity or priority of any claim against the Debtors, a waiver of the Debtors' rights to subsequently dispute such claim or the assumption or adoption of any agreement, contract or lease under section 365 of the Bankruptcy Code.

4. Notwithstanding anything to the contrary contained herein, any payment to be made, or authorization contained, hereunder shall be subject to the requirements imposed on the Debtors under any approved order regarding the use of cash collateral approved by this Court in these chapter 11 cases.

5. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

6. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized and directed to receive, process, honor and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as being approved by this Order.

7. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 7062, 9014 or otherwise, this Order shall be immediately effective and enforceable upon its entry.

8. The Court retains jurisdiction with respect to all matters arising from or related to the interpretation or implementation of this Order.

Date: \_\_\_\_\_, 2013  
Wilmington, Delaware

\_\_\_\_\_  
The Honorable Kevin Gross  
Chief United States Bankruptcy Judge